

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte WILHELMUS J.A. STRIK

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Appeal No. 95-3890  
Application 08/023,665<sup>1</sup>

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ON BRIEF

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Before URYNOWICZ, KRASS and JERRY SMITH, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed February 26, 1993.

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-5, which constitute all the claims in the application.

The claimed invention pertains to a display device having picture electrodes arranged in rows and columns. One aspect of the invention is that picture elements in consecutive rows are offset with respect to each other by a distance covering half a pitch. Another aspect of the invention is that various wiring components of the device are arranged substantially mirror-symmetrically with respect to a direction transverse to the row direction for pixels associated with consecutive rows.

Representative claim 1 is reproduced as follows:

1. A display device comprising an electro-optical display medium between two supporting plates, a system of pixels arranged in rows and columns, with each pixel being formed by picture electrodes arranged on the facing surfaces of the supporting plates, and a system of row and column electrodes for presenting selection and data signals, a picture electrode on one of the supporting plates being connected in an electrically conducting manner to a first switching unit between a column electrode for data signals and the picture electrode and to a second switching unit between the picture electrode and an electrode for a reference voltage, characterized in that the pixels in consecutive rows are offset with respect to each other in the row direction by a distance covering half a pitch, and in that the patterns of switching units, picture electrodes, column electrodes and electrodes for the reference voltage are arranged substantially mirror-symmetrically with respect to a direction transverse to the row direction for pixels associated with consecutive rows.

The examiner relies on the following references:

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Piper	4,812,017	Mar. 14, 1989
Kuijk	5,032,831	July 16, 1991
Hamada et al. (Hamada)	5,144,288	Sep. 01, 1992

Claims 1-5 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Kuijk in view of Piper with respect to claims 1 and 4, and adds Hamada with respect to claims 2, 3 and 5.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

#### OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the collective evidence relied upon and the level of skill in the particular art would not have suggested to one of

ordinary skill in the art the obviousness of the invention as set forth in claims 1-5. Accordingly, we reverse.

We consider first the rejection of claims 1 and 4 under 35 U.S.C. § 103 as unpatentable over the teachings of Kuijk and Piper. Appellant has indicated that these claims stand or fall together [brief, page 5]. Thus, we will consider the rejection of independent claim 1 as the representative claim for this rejection.

The examiner's position is that Kuijk teaches all the recitations of claim 1 except for the half a pitch offset between consecutive rows. The examiner cites Piper as supplying this teaching and provides an analysis as to why Kuijk would have been modified with the teachings of Piper to arrive at the invention of claim 1 [answer, pages 3-4]. Appellant argues that the applied prior art would not suggest the recitation of claim 1 relating to the mirror-symmetry of the components [brief, pages 6-7, reply brief, pages 2-3]. The examiner responds that the mirror symmetry is met by the teachings of Kuijk. For reasons which we will discuss in more detail below, we agree with appellant's position.

As a general rule in rejecting claims under 35 U.S.C.

§ 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

When these rules are considered under the facts of this case, we agree with appellant that the proposed combination of the teachings of Kuijk with the teachings of Piper would not result in the claimed invention. The examiner has recognized that Kuijk fails to suggest the half a pitch offset of pixels in consecutive rows. The examiner also relies on Kuijk for the mirror-symmetry relationship. However, when the Kuijk display device is modified to include a half a pitch offset as suggested

by Piper, the Kuijk display device would no longer have the symmetry with which it started. In other words, the modification proposed by the examiner would destroy one of the features relied on to support the rejection. Thus, neither reference teaches the claimed display device which has both the property of half a pitch offset and the simultaneous mirror-symmetry of the components.

As pointed out by appellant, the straightforward modification of the Kuijk display device with the Piper offset would result in a display device which lacks the claimed symmetry. Since the examiner has not addressed the question of why it would have been obvious to the artisan to retain the mirror-symmetry of Kuijk while offsetting the picture electrodes

of consecutive rows, the examiner has failed to establish a prima facie case of obviousness. The only basis on this record to make the collective teachings of Kuijk and Piper equate to the claimed invention would result from a hindsight reconstruction of the disclosed invention, and such reconstruction would be improper.

For all the reasons just discussed, the record in this case does not support the obviousness of the invention as set forth in claim 1. Therefore, we do not sustain the rejection of claims 1 and 4.

We now consider the rejection of claims 2, 3 and 5 under 35 U.S.C. § 103 as unpatentable over the teachings of Kuijk, Piper and Hamada. Appellant indicates that these claims stand or fall together [brief, page 5]. These claims are all dependent claims which depend from claim 1. For reasons discussed above, the invention of claim 1 is not suggested by the collective teachings of Kuijk and Piper. Therefore, the first question to be considered is whether the teachings of Hamada overcome the deficiencies present in the rejection of claim 1.

Hamada was cited only for its teaching of a picture device having components in the shape of a hexagon. This hexagon

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characteristic of the display is recited only in the dependent claims. Hamada provides no teachings relevant to the formation of a display device having both the property of half a pitch offset and the claimed mirror-symmetry. Thus, we find nothing in Hamada which corrects the deficiencies in the teachings of Kuijk and Piper. Therefore, we do not sustain the rejection of dependent claims 2, 3 and 5 as proposed by the examiner based upon the record before us.

In summary, we have not sustained either of the rejections set forth by the examiner. Accordingly, the decision of the examiner rejecting claims 1-5 is reversed.

REVERSED

STANLEY M. URYNOWICZ, JR.  
Administrative Patent Judge

ERROL A. KRASS  
Administrative Patent Judge

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